

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)**

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| DADIRI MUYA, | : | Case No. 1:23-cv-00185 |
| | : | |
| Plaintiff, | : | District Judge Matthew W. McFarland |
| | : | Magistrate Judge Caroline H. Gentry |
| vs. | : | |
| | : | |
| ANDREW FIRMAN, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

**ORDER WITHDRAWING
REPORT AND RECOMMENDATION (DOC. NO. 34)**

On February 6, 2025, after a series of orders for Plaintiff to serve Defendants, the undersigned Magistrate Judge issued an order giving Plaintiff one final opportunity to serve Defendants, and to file a Notice detailing that service by March 3, 2025. (Second Order Concerning Service, Doc. No. 32.) When no Notice Concerning Service was filed, and with no evidence of service on the docket, the undersigned recommended that the case be dismissed. (Doc. No. 34.)

A few days later, the Court received from Plaintiff a document titled both “Motion for the Court to Intervene and Order the U.S. Marshal’s to Effect Service” and “Notice Concerning Service.” (Doc. No. 35.) In substance, it is a motion asking the Court to assist with service.

Although received on March 24, 2025, the document appears to have been notarized almost a month earlier on February 25, 2025. (*Id.* at PageID 150.) It is not clear when the Motion/Notice was mailed.

As a rule, and absent any evidence to the contrary, the Court uses the date that a prisoner signed a document and deposited it for mailing to the Court as the date of “filing.” *See Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008) (citing among other things *Houston v. Lack*, 487 U.S. 266 (1988)) (discussing the “prison mailbox rule”). Accordingly, assuming that Plaintiff here signed the Motion/Notice on February 25 as indicated and handed it over for mailing on that date, it was “filed” by the March 3 deadline set by this Court. (*See* Doc. No. 32 at PageID 140.)

The undersigned’s Report and Recommendation relied, in part, on Plaintiff’s failure to timely file a Notice Concerning Service as ordered. (Doc. No. 34 at PageID 144.) As it appears that Plaintiff did file or may have filed a timely Notice (at least in part, in title), the undersigned finds it equitable to **WITHDRAW** the Report and Recommendation. (Doc. No. 34.) The Clerk of Court shall so note on the docket.

IT IS SO ORDERED.

s/Caroline H. Gentry

Caroline H. Gentry

United States Magistrate Judge